

REMARKS

This Amendment is responsive to the April 21, 2004 Office Action and adds new claims 17-22. None of pending claims 1-16 was indicated as containing allowable subject matter in the Office Action.

Claims 1-16 stand rejected under 35 U.S.C. § 102(b) for anticipation by U.S. Patent No. 5,354,149 to Breaux. In view of the foregoing amendments and following remarks, Applicant respectfully requests reconsideration of the Examiner's anticipation rejections of the pending claims.

Independent claim 1 is directed to a wall member for use in constructing earth retaining walls. The wall member is formed by a rectangular-shaped unitary shell member defined by two longitudinal walls and two end walls. The longitudinal walls and end walls define an opening extending through the shell member for receiving filler material into the shell member. The end walls of the shell member are configured to connect to the end walls of additional shell members to form the earth retaining wall. As amended, independent claim 1 further includes a lid member adapted for frictional engagement with the opening in the shell member for enclosing the opening. Independent claim 7 is directed to a retaining wall system including a plurality of interconnected and rectangular-shaped unitary shell members, and independent claim 13 is directed to a method of assembling the retaining wall system. Independent claims 7 and 13 were amended in a similar manner to independent claim 1 to include the lid member limitation, and the following discussion with respect to the lid member set forth in independent claim 1 is equally applicable to independent claims 7 and 13.

The Breaux patent is directed to an in-ground barrier system. Referring, for example, to Figs. 4 and 5 of the Breaux patent, the system includes one or more individual guide box assemblies (2). Each of the assemblies (2) is formed by opposing wall panels (200) that are connected at longitudinal ends by individual gates (211).

Applicant respectfully submits that the wall member(s) as set forth in independent claims 1, 7, and 13 are not anticipated by the Breaux patent. The individual guide box assemblies (2) used an in-ground barrier system disclosed by the Breaux patent are not unitary wall members that are formed from unitary shell members each having two integrally-formed longitudinal walls and two end walls. In contrast, the arrangement disclosed by the Breaux patent requires distinct and individual gate/end members for connecting two elongated panels. Independent claims 1, 7, and 13 set forth that the wall member(s) are formed by unitary shell members and, therefore, independent claims 1, 7, and 13 are not anticipated by the disclosure of the Breaux patent. Reconsideration of the Examiner's anticipation rejection of independent claims 1, 7, and 13 is respectfully requested.

Claims 2-6, 8-12, and 14-16 depend directly or indirectly from and add further limitations to independent claims 1, 7, and 13, respectively, and distinguish over the prior art of record for the reasons discussed previously in connection with independent claims 1, 7, and 13. Reconsideration of the rejection of claims 2-6, 8-12, and 14-16 is respectfully requested.

New claims 17-22 are directed to a lid member for enclosing the unitary shell member. This limitation was added to further distinguish the present invention over the prior art of record in this application. None of the references identified in the Office Action teach or suggest the lid member limitation. Specifically, none of the references identified in the Office Action teach or suggest a lid member adapted for frictional engagement with a unitary shell member for enclosing a top opening in the shell member used to admit fill material into the shell member.

U.S. Patent No. 6,062,772 to Perkins discloses a masonry block retaining wall assembly that includes individual blocks. In Fig. 1 of the Perkins patent, a cap stone (55) is used on a top row of the blocks. However, the cap stone (55) is not adapted to frictionally engage any of the blocks as set forth in amended independent claims 1, 7, and 13. U.S. Patent No. 6,394,705 to Lefebvre discloses the use of a lid (54) for enclosing an opening in block body (10), (See Fig. 1 of the Lefebvre patent). However, as with the Perkin's cap stone, the lid (54) is not adapted

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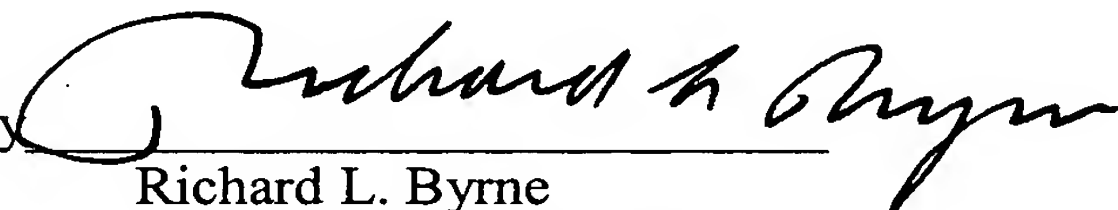
to frictionally engage the block body (10) as set forth in claims 17, 19, and 21. None of the other references cited by the Examiner in the Office Action disclose any type of lid structure. For the foregoing additional reasons, Applicant respectfully submits that new claims 17, 19, and 21 further distinguish over the prior art of record and are in condition for allowance.

New claims 18, 20, and 22 depend from claims 17, 19, and 21, respectively, and further define that the lid member includes a depending projection for frictionally engaging the shell member and enclosing the opening in the shell member. Claims 18, 20, and 22 are deemed to distinguish over the prior art of record for all the reasons discussed previously in connection with claims 17, 19, and 21. Additionally, Applicant notes that the prior art of record fails to teach or suggest the depending projection on the lid member as set forth in claims 18, 20, and 22.

For the foregoing reasons, Applicant respectfully submits that pending claims 1-22 distinguish over the prior art of record and are in condition for allowance. Reconsideration of the Examiner's rejections and allowance of pending claims 1-22 are respectfully requested.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON P.C.

By 

Richard L. Byrne
Registration No. 28,498
Attorney for Applicant
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: (412) 471-8815
Facsimile (412) 471-4094